IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

SECOND APPEAL NO. 145 OF 2005

Vasant Haribhau Shinde. ... Appellant.

Versus.

Smt.Hausabai @ Bhagubai Baban
Sonawane and others. ... Respondents.

Shri A.S.Khandeparkar i/by Shri Satish S.Kalke and
Ashish Pawaskar for the Appellant.

CORAM : ABHAY S. OKA, J.

DATED : 2nd March, 2005.

P.C.:

1. Heard Shri Khandeparkar for the Appellant/original Defendant No.2. The Appellant/Defendant No.2 has purchased of the suit property through original Defendant No.1. There is a decree for partition passed by the trial Court and confirmed by the Appellate Court.

2. The first submission of Shri Khandeparkar is that there is no prayer for possession in the suit and that the sale deed in favour of the Appellant is not challenged. The Second submission of Shri Khandeparkar is that the Appellant has discharged burden of proving the legal necessity for the sale transaction. The third submission is that the decree of partition could not have been passed in view of section 6 of the Hindu Succession Act.

3. In so far as the first submission is concerned, The

suit is filed for claiming partition and separate possession of share of the Plaintiffs i.e. Respondents Nos.1 to 3. In such a suit prayer for possession need not be specifically made. In paragraph 4 of the plaint there is a specific challenge to the authority of the original Defendant No.1 to execute the sale deed. The parties knew that there was a challenge to the authority of Defendant No.1 to execute sale deed and therefore, an issue was framed by the trial court in that respect and the parties have led evidence. Therefore, there is no merit in the first submission. So far as the second submission is concerned, the Courts below have given concurrent finding of fact that the Appellant has failed to prove that the transaction was for legal necessity. The findings of fact are based on consideration of oral and documentary evidence on record and in an Appeal under section 100 of the Code of Civil Procedure, 1908, no interference is permissible even if another view is possible to be taken on the evidence on record.

4. So far as the third submission is concerned, the same has no merit. The original Plaintiffs have right to claim partition of their share to which they are entitled to as per the provisions of section 15 of the Hindu Succession Act and while calculating their share a notional partition under section 6 was required to be considered.

4. There is no substantial question of law involved in the Second Appeal. The same is dismissed with no order as to costs.

Judge.